APPEAL BRIEF UNDER 37 C.F.R. § 41.37

TABLE OF CONTENTS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: John J. Light et al.   Examiner: Le H. Luu

Serial No.: 10/659,632   Group Art Unit: 2141

Filed: September 10, 2003   Docket: 884.904US1

For: TRANSMITTING UNCONFIRMED COMPUTING PLATFORM SERVICE
INFORMATION (As Amended)

APPEAL BRIEF UNDER 37 CFR § 41.37

Mail Stop Appeal Brief- Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is presented in support of the Notice of Appeal to the Board of Patent
Appeals and Interferences, filed on same date herewith, from the Final Rejection of claims 1-46
of the above-identified application, as set forth in the Final Office Action mailed on February 5,
2008.

The Commissioner of Patents and Trademarks is hereby authorized to charge Deposit
Account No. 19-0743 in the amount of $510.00 which represents the requisite fee set forth in 37
C.F.R. § 41.20(b)(2). The Appellants respectfully request consideration and reversal of the
Examiner's rejections of the pending claims.

1. REAL PARTY IN INTEREST

The real party in interest of the above-captioned patent application is the assignee,
INTEL CORPORATION.

2. RELATED APPEALS AND INTERFERENCES

There are no other appeals, interferences, or judicial proceedings known to Appellant that will have a bearing on the Board's decision in the present appeal.

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3. STATUS OF THE CLAIMS

The present application was filed on September 10, 2003 with claims 1-46. A non-final Office Action was mailed October 5, 2007. A Final Office Action (hereinafter "the Final Office Action") was mailed February 5, 2008. Claims 1-46 stand twice rejected, remain pending, and are the subject of the present Appeal.

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
Serial Number: 10/659,632
Filing Date: September 10, 2003
Title: TRANSMITTING UNCONFIRMED COMPUTING PLATFORM SERVICE INFORMATION (As Amended)
Page 5
Dkt: 884.904US1

4. STATUS OF AMENDMENTS

Claim 21 was amended to follow, as nearly as possible, the suggestion offered by the Office in the non-final office action mailed on October 5, 2007, so as to recite: " An article comprising a tangible computer-readable medium containing computer-executable instructions which, when executed, results in a machine performing ...". Claim 24 was amended to conform to this revised language. Both amendments were made to expedite prosecution, and not for reasons related to patentability.

5. SUMMARY OF CLAIMED SUBJECT MATTER

This summary is presented in compliance with the requirements of Title 37 C.F.R. §
41.37(c)(1)(v), mandating a "concise explanation of the subject matter defined in each of the
independent claims involved in the appeal …". Nothing contained in this summary is intended
to change the specific language of the claims described, nor is the language of this summary to
be construed so as to limit the scope of the claims in any way.

Independent Claim 1 (FIG. 2; page 10, line 12-page 11, line 18)

Some of the embodiments claimed are related to a method (211) including: receiving
computing platform service information associated with at least one service offered by at least a
subset of a plurality of service points (221); storing at least a portion of the computing platform
service information (231); and periodically transmitting, without confirmation, a part of the at
least a portion of the computing platform service information to at least one potential subscriber
to the at least one service (235).

Independent Claim 21 (FIG. 2; FIG. 3; page 10, line 12-page 11, line 18; page 15, lines 5-27)

Some of the embodiments claimed are related to an article (380) comprising a tangible
computer-readable medium (382) containing computer-executable instructions (384) which,
when executed, results in a machine performing: receiving computing platform service
information associated with at least one service offered by at least a subset of a plurality of
service points in a range area (221); storing at least a portion of the computing platform service
information (231); and periodically transmitting, without confirmation, a part of the at least a
portion of the computing platform service information to at least one potential subscriber to the
at least one service (235).

Independent Claim 29 (FIG. 1; page 5, line 13-page 6, line 5)

Some of the embodiments claimed are related to an apparatus (100) including: a memory
module (134) to store computing platform service information (142) associated with at least one
service (146) offered by at least a subset of a plurality of service points (150) in a range area

(154); and a transmission module (138), coupled to the memory module, to periodically transmit without confirmation at least a part (158) of the computing platform service information to at least one potential subscriber (162) to the at least one service.

Independent Claim 39 (FIG. 1; page 7, lines 1-11)

Some of the embodiments claimed are related to a system (120) including: a memory module (134) to store computing platform service information (142) associated with at least one service (146) offered by at least a subset of a plurality of service points (150) in a range area (154); a transmission module (138), coupled to the memory module, to transmit without confirmation at least a part (158) of the computing platform service information to at least one potential subscriber (162) to the at least one service; and an omnidirectional antenna (174) coupled to the transmission module.

This summary does not provide an exhaustive or exclusive view of the present subject matter, and the Appellant refers to each of the appended claims and its legal equivalents for a complete statement of the invention.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

6.1 The specification was objected to under 37 CFR 1.77(b).

6.2 Claims 1-46 were rejected under 35 U.S.C. § 102(e) as being anticipated by Sorvari et al. (U.S. 2004/0043758; hereinafter "Sorvari").

6.3 Claims 21-28 were rejected under 35 U.S.C. § 101 because it is asserted that the claimed invention is directed to non-statutory subject matter.

7. ARGUMENT

A) The Objection to The Specification

The Office has twice requested the Appellant to arrange the specification in the order as listed in 37 CFR 1.77(b), draft each of the lettered items in upper case, without underlining or bold type as a section heading, and add the phrase "Not Applicable" to follow a section heading, if no text follows the section heading. However, the Appellant respectfully submits that there is no mandate to do so, since neither the rules nor the patent statute requires a patent applicant to arrange the specification in that way. As discussed in 37 CFR § 1.77 (b):

> "(b) The specification *should* include the following sections in order:
> (1) Title of the invention, which may be accompanied by an introductory portion stating the name, citizenship, and residence of the applicant (unless included in the application data sheet).
> (2) Cross-reference to related applications (unless included in the application data sheet).
> (3) Statement regarding federally sponsored research or development.
> (4) The names of the parties to a joint research agreement.
> (5) Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on a compact disc and an incorporation-by-reference of the material on the compact disc (see § 1.52(e)(5)). The total number of compact discs including duplicates and the files on each compact disc shall be specified.
> (6) Background of the invention.
> (7) Brief summary of the invention.
> (8) Brief description of the several views of the drawing.
> (9) Detailed description of the invention.
> (10) A claim or claims.
> (11) Abstract of the disclosure.
> (12) "Sequence Listing," if on paper (see §§ 1.821 through 1.825)."
> (emphasis added)

The language of the Code, including use of the word "should" indicates that such arrangement of the specification is optional, rather than mandatory. Indeed, the specification of the Application is arranged substantially following 37 CFR § 1.77 (b), and the Appellant is unaware of any legal requirement that the specification be exactly arranged in the way as the Office requests, such as each of the lettered items be drafted in upper case without underlining or bold type as a section heading, and the phrase "Not Applicable" be added to follow a section heading, if no text follows

the section heading. Therefore, the Appellant respectfully declines to amend the arrangement of the specification, and requests that the objection to the specification be withdrawn.

The Final Office Action admits that MPEP does not explicitly require a summary of the invention, but still requests that the Appellant provide a "Brief Summary of the Invention". The Appellant agrees with the admission made by the Office, and respectfully submits that the inclusion of the summary of the invention is optional, since neither the rules nor the patent statute require an applicant to provide this kind of summary. As discussed in 37 CFR § 1.73:

> "A brief summary of the invention indicating its nature and substance, which may include a statement of the object of the invention, *should* precede the detailed description. Such summary should, *when set forth*, be commensurate with the invention as claimed and any object recited should be that of the invention as claimed." (emphasis added)

The language of the Code, including use of the word "should" and the phrase "when set forth," indicates that inclusion of a summary section is optional, rather than mandatory. Indeed, the Appellant is unaware of any legal requirement upon which providing, or amending the specification to provide, a summary of the Invention would be based. Therefore, the Appellant respectfully declines to amend the specification to include a summary, and requests that the objection to the specification be withdrawn.

B) The Rejection Of Claims 1-46 Under 35 U.S.C. § 102(e)

The Appellant does not admit that Sorvari is prior art and reserves the right to swear behind the reference at a later date. In addition, because the Appellant asserts that a *prima facie* case of anticipation has not been established, the Appellant traverses this rejection of the claims.

It is respectfully noted that anticipation under 35 USC § 102 requires the disclosure in a single prior art reference of each element of the claim under consideration. *See Verdegaal Bros. V. Union Oil Co. of California,* 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, "[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.,* 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984)

(citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983))

(emphasis added). "The *identical invention* must be shown in as complete detail as is contained

in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920

(Fed. Cir. 1989); MPEP § 2131 (emphasis added).

Independent claim 1 is directed to a method comprising:

> periodically **transmitting, without confirmation**, a part of the at least a portion
> of the computing platform service information to at least one potential subscriber
> to the at least one service.

Similar language is used in independent claims 21, 29, and 39. In the Final Office

Action, the Office asserts that this element is taught by Sorvari at page 4, paragraph [0059], page

10, paragraph [0123], and pages 23-24, paragraphs [0307] – [0309]. However, the Appellant can

find nothing in Sorvari, or any other evidence in the record, to indicate that such is the case.

Sorvari teaches that:

> "when a wireless device accesses services, data pertaining to the service access,
> along with any context related information is transmitted within the wireless
> device, or to a remote server. The data is processed in conjunction with
> bookmarks/short-cuts specified within the device, and are organized and
> presented to the wireless device in accordance with preference instructions
> specified within the wireless device." (*See* Sorvari, Abstract)

That is, Sorvari operates by transmitting *with confirmation* to a wireless device. Indeed, every

embodiment reviewed by the Appellant involves prior messaging by the wireless device. *See*

e.g., Sorvari, paragraphs [0086], [0088], [0095], [0100], [0123], [0307]-[0309], [0342]-[0344],

as well as independent claims 1, 23, 45, and 67. As a matter of contrast, what is claimed and

taught by the Appellant is explained in the specification as follows:

> "Any potential subscriber ... might then obtain a summary of services offered
> within the selected range area without having to discover (or make connection
> with) every service provider in the vicinity. In this example, the PDA may choose
> to listen for all services available in the store, using the WSB broadcast
> information to fill in gaps in service offerings, or the PDA may choose to listen
> only to brokers broadcasting in the store. ... The transmission module 138,
> capable of being communicatively coupled to the memory module 134, may be

used to transmit (with or **without confirmation by any listening device**) at least a part 158 of the solicited or unsolicited computing platform service information 142 to one or more potential subscribers 162 to the respective service. In other words, some portion (or all) of the stored information 142 may be broadcast to various potential subscribers 162, such as PDAs, cellular telephones, laptops, etc." Application, pg. 3, lines 8-16 and pg. 5, line 29 – pg. 6, line 5.

Nothing in Sorvari would lead one of ordinary skill in the art to teach unconfirmed service discovery by wireless devices, because Sorvari describes extensive use of context sensitive web services that rely on the wireless device to sense the user's environment "and in response, to provide recommendations to the user that is appropriate to the user's environment and that can be accessed by the user's command or other form of user input." *See* Sorvari, Title, and paragraph [0233]. Therefore, Sorvari does not teach the identical invention claimed by the Appellant.

In the Response to Argument part of the Final Office Action, section 17, pages 7-8, the Office asserts, "*Sorvari teaches a server automatically transmits local recommendation to a wireless device without confirmation from the wireless device (page 4, paragraph [0059], page 10, paragraph [0123], pages 23-24, paragraphs [0307-0309]).*" However, this assertion is incorrect.

Referring to paragraph [0059] of Sorvari, cited by the Final Office Action, with emphasis added:

> "**A service recommendation engine or algorithms (used interchangeably herein) are configured to recommend or determine a subset of services from a plurality of services <u>according to user-related filter criteria</u>**. Such criteria may be any factor unique or personal to the user or the user's wireless device which can be utilized in ascertaining or inferring possible services preferred by a particular user. Examples of user-related filter criteria may include static or dynamic factors, such as the user's service usage pattern or preference (e.g., when, where, how, a number of times, etc. that a service was used); the user's current context which may inferred from the user's perceived environment through various sensory devices; the user's past and current activities; the user's profile (habits, likes-dislikes, personal characteristics, personal background, etc.); and/or the current environment of the wireless device sensed by one or more sensors (e.g., a location/positioning sensor, a compass, a touch sensor, an audio sensor, a light sensor, and a temperature sensor). Once a set of recommended services are determined, the service may be stored as bookmarks in the wireless device, or at a remote server." (Emphasis added)

From the above excerpt of Sorvari, it can be seen that Sorvari discloses that a service

recommendation engine recommends services to a wireless device user **according to user-**

related filter criteria. This is substantially different from **transmitting without confirmation**

by potential subscriber, which is taught in the Application and claimed by the Appellant,

because Sorvari adopts user-related filter criteria to constrain the services being recommended or

transmitted to the user, rather than transmission without confirmation.

Referring to paragraph [0123] of Sorvari, cited in the Final Office Action, the reader is

encouraged to note the bolded language:

> "As the user carries about wireless device 800, sensors 806-812 continuously
> measure the geographic location and context of the device, which are compiled
> into a metadata vector 1134 representing the current context (FIG. 11B).
> **Wireless device 800 periodically transmits the current context in an updated**
> **menu request message 1133, shown in FIG. 11B, over the wireless network**
> **831 to the network server 826**. The updated menu request message 1133
> includes the network address of the server 826, an op code value RQ_MN that
> designates the message as an updated menu request message, and an operand
> portion containing the current context ... ... This same sequence of steps is
> automatically performed by the wireless device 800 and **the network server 826**
> **in response to the wireless device 800 automatically transmitting messages**
> **with a unique op code designating that the message is an automatically**
> **transmitted message**." (Emphasis added)

From the above excerpt of Sorvari, it can be seen that **wireless device 800** (rather than

network server 826) **periodically transmits** the current context to the network server 826, and **in**

response, the network server 826 automatically transmits messages to the wireless device

800. This has nothing to do with **transmitting without confirmation by potential subscriber**

claimed by the Appellant. The specification of the Application illustrates this claimed feature,

for example, when demonstrating that the transmission module 138 periodically transmits,

without confirmation by any listening device, the computing platform service information 142 to

potential subscribers 162. Thus, Sorvari and the claimed invention work in different ways.

Further referring to paragraphs [0307] – [0309] of Sorvari, cited by the Final Office

Action, it can be seen that Sorvari extensively describes the Context inference Engine 827 in the

network server 826 and the Context inference Engine 1201 of the wireless device 800, and the

user may, for example, fully or partly disable the Context inference Engine 827 of the network to

control the amount of his/her information that can be used by third party services. The Appellant cannot find any parts of paragraphs [0307] – [0309] of Sorvari that would lead one of ordinary skill in the art to infer transmitting without confirmation by potential subscribers (or unconfirmed service discovery by wireless devices), as claimed by the Appellant.

In addition, the Office's assertion that "*Sorvari teaches a server automatically transmits local recommendation to a wireless device without confirmation from the wireless device*" does not justify the intended conclusion that Sorvari teaches the claimed feature "*periodically transmitting, without confirmation, a part of the at least a portion of the computing platform service information to at least one potential subscriber to the at least one service*", because the "**local recommendation**" of Sorvari does not equate to "**a part of the at least a portion of the computing platform service information**" in claims.

In sum, Appellant respectfully submits that in every instance where Sorvari teaches server broadcasting, the information transmitted is based on predetermined knowledge of receiving party requirements, and thus, Sorvari does not teach the claimed feature of "periodically **transmitting, without confirmation**, a part of the at least a portion of the computing platform service information to at least one potential subscriber to the at least one service".

Therefore, since Sorvari does not teach the identical invention claimed by the Appellant, independent claims 1, 21, 29, and 39 (and all claims depending from them) should be in condition for allowance. Reconsideration and withdrawal of the rejection of claims 1-46 under § 102 is therefore respectfully requested.

C) The Rejection Of Claims 21-28 Under 35 U.S.C. § 101

Claims 21-28 were rejected under 35 U.S.C. § 101 in the Final Office Action, because it was asserted that the claimed invention is directed to non-statutory subject matter. The Appellant respectfully traverses the rejection, since no *prima-facie* case of non-statutory subject matter has been established.

The Appellant has already amended claim 21 to recite: "An article comprising a tangible computer-readable storage medium containing computer-executable instructions which, when executed, results in a machine performing ... ..."

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
Serial Number: 10/659,632
Filing Date: September 10, 2003
Title: TRANSMITTING UNCONFIRMED COMPUTING PLATFORM SERVICE INFORMATION (As Amended)

Page 15
Dkt: 884.904US1

Thus, claim 21 and all claims depending therefrom recite a tangible computer-readable storage medium having executable instructions stored thereon. The claimed tangible computer-readable medium is clearly part of the statutory category that embraces an article of manufacture. The Appellant therefore respectfully requests reconsideration and withdrawal of the rejection of claims 21-28 under 35 U.S.C. § 101.

SUMMARY

For the reasons set forth above, the specification in the Application conforms to the statutory requirements, and the objections raised are improper. In addition, claims 1-46 have not been properly rejected under 35 USC § 102(e) as being anticipated by Sorvari. Claims 21-28 have not been properly rejected under 35 USC § 101, since they clearly recite an article of manufacture.

Therefore, reversal of the rejections and objections, and allowance of the pending claims are respectfully requested. If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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8. CLAIMS APPENDIX

1.   A method, comprising:

   receiving computing platform service information associated with at least one service offered by at least a subset of a plurality of service points;

   storing at least a portion of the computing platform service information; and

   periodically transmitting, without confirmation, a part of the at least a portion of the computing platform service information to at least one potential subscriber to the at least one service.

2.   The method of claim 1, further comprising:

   determining that the at least one service offered by one of the plurality of service points is no longer available.

3.   The method of claim 2, wherein determining that the at least one service offered by one of the plurality of service points is no longer available further comprises:
   determining that the at least one service does not respond to a polling query.

4.   The method of claim 2, wherein determining that the at least one service offered by one of the plurality of service points is no longer available further comprises:
   determining that the at least one service does not respond within a selected timeout period.

5.   The method of claim 1, further comprising:

   discovering that a new service offered by one of the plurality of service points is currently available.

6.   The method of claim 5, further comprising:

   providing a direction to the new service.

7. The method of claim 1, further comprising:

     discovering that a new service offered by an additional service point not included in the plurality of service points is currently available

8. The method of claim 1, wherein the at least one service includes a wireless service selected from: a network connection service, a printer service, a display service, a storage service, an inventory service, a game service, an interactive customer service, a query service, a communication service, and an advertising service.

9. The method of claim 1, wherein periodically transmitting occurs at a single physical location.

10. The method of claim 1, wherein the plurality of service points are located in a range area.

11. The method of claim 10, further comprising:

     monitoring the range area to detect a plurality of broadcasting service points.

12. The method of claim 10, further comprising:

     monitoring the range area to detect at least one wireless service broker.

13. The method of claim 10, further comprising:

     receiving computing platform service information associated with at least one service offered by at least a subset of a plurality of service points located in another range area from a single wireless service broker.

14. The method of claim 1, further comprising:

     receiving computing platform service information associated with at least one service offered by at least a subset of a plurality of service points from at least one wireless service broker.

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
Serial Number: 10/659,632
Filing Date: September 10, 2003
Title: TRANSMITTING UNCONFIRMED COMPUTING PLATFORM SERVICE INFORMATION (As Amended)

Page 18
Dkt: 884.904US1

15. The method of claim 1, wherein the computing platform service information includes an extensible markup language device description.

16. The method of claim 1, wherein the part of the at least a portion of the computing platform service information includes sufficient information to access the service directly.

17. The method of claim 1, wherein the service is offered by a Universal Plug and Play (UPnP) node.

18. The method of claim 1, wherein the computing platform service information comprises unsolicited computing platform service information.

19. The method of claim 1, wherein the computing platform service information comprises at least one attribute associated with the at least one service.

20. The method of claim 19, wherein the at least one attribute is selected from at least one of a range, a signal strength, and a location.

21. An article comprising a tangible computer-readable medium containing computer-executable instructions which, when executed, results in a machine performing:

receiving computing platform service information associated with at least one service offered by at least a subset of a plurality of service points in a range area;

storing at least a portion of the computing platform service information; and

periodically transmitting, without confirmation, a part of the at least a portion of the computing platform service information to at least one potential subscriber to the at least one service.

22. The article of claim 21, wherein periodically transmitting, without confirmation, the part of the at least a portion of the computing platform service information further includes:

transmitting, without confirmation, the part of the at least a portion of the computing platform service information at intervals of less than about every five minutes.

23. The article of claim 21, wherein receiving computing platform service information further comprises:

running a process, in a network, to receive the computing platform service information.

24. The article of claim 21, wherein the computer-executable instructions, when executed, results in the machine performing:

selecting the portion of the computing platform service information according to a policy.

25. The article of claim 24, wherein the policy is associated with at least one of a pecuniary relationship, an ownership relationship, a security relationship, and a device type.

26. The article of claim 21, wherein the computing platform service information comprises unsolicited computing platform service information.

27. The article of claim 21, wherein the computing platform service information comprises at least one attribute associated with the at least one service.

28. The article of claim 27, wherein the at least one attribute is selected from at least one of a range, a signal strength, and a location.

29. An apparatus, comprising:

a memory module to store computing platform service information associated with at least one service offered by at least a subset of a plurality of service points in a range area; and

a transmission module, coupled to the memory module, to periodically transmit without confirmation at least a part of the computing platform service information to at least one potential subscriber to the at least one service.

30. The apparatus of claim 29, further comprising:

a reception module to receive the computing platform service information.

31. The apparatus of claim 29, wherein the reception module comprises a software module to execute in a network.

32. The apparatus of claim 29, wherein the range area is defined by a network router count.

33. The apparatus of claim 32, wherein the network router count comprises a time-to-live count of about 1 to about 3.

34. The apparatus of claim 29, wherein the range area is defined by a reception range of a wireless reception module coupled to the memory module.

35. The apparatus of claim 29, wherein the transmission module is to provide a direction to at least one of the plurality of service points if the at least one potential subscriber indicates the at least one of the plurality of service points is not within a useful range of the at least one potential subscriber.

36. The apparatus of claim 29, wherein the computing platform service information comprises unsolicited computing platform service information.

37. The apparatus of claim 29, wherein the computing platform service information comprises at least one attribute associated with the at least one service.

38. The apparatus of claim 37, wherein the at least one attribute is selected from at least one of a range, a signal strength, and a location.

39. A system, comprising:

a memory module to store computing platform service information associated with at least one service offered by at least a subset of a plurality of service points in a range area;

a transmission module, coupled to the memory module, to transmit without confirmation at least a part of the computing platform service information to at least one potential subscriber to the at least one service; and

an omnidirectional antenna coupled to the transmission module.

40. The system of claim 39, further comprising:

a reception module, coupled to the omnidirectional antenna, to receive the computing platform service information.

41. The system of claim 39, wherein the part of the computing platform service information is selected according to a policy.

42. The system of claim 41, wherein the policy specifies a service type.

43. The system of claim 39, further comprising:

a wireless service broker to receive the at least a part of the computing platform service information from the transmission module.

44. The system of claim 39, wherein the computing platform service information comprises unsolicited computing platform service information.

45. The system of claim 39, wherein the computing platform service information comprises at least one attribute associated with the at least one service.

46. The system of claim 45, wherein the at least one attribute is selected from at least one of a range, a signal strength, and a location.

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
Serial Number: 10/659,632
Filing Date: September 10, 2003
Title: TRANSMITTING UNCONFIRMED COMPUTING PLATFORM SERVICE INFORMATION (As Amended)

Page 22
Dkt: 884.904US1

9. EVIDENCE APPENDIX

None.

10. RELATED PROCEEDINGS APPENDIX

None.